

PATENT/Docket No. PC 11050A

Serial No. 09/989,933

Page 8

REMARKS**I. Preliminary Remarks.****A. Status of Claims.**

The claims are subject to a restriction requirement. Applicants chose, with traverse, to prosecute Group I, claims 30-41, 46, 47, 54, 55, 60-68, 73, and 74, drawn to an attenuated bovine viral diarrhea virus (BVDV) and nucleic acids encoding such, classified in class 435, subclass

235.1. The status of claims is as follows:

Claims 1-34, 36, 38-41, 46-47, 54-55, 60-68, and 73-74 are canceled.

Claims 42-45, 48-53, 56-59, 69-72, and 75-76 are withdrawn.

Claims 35 and 37 are allowed.

Claims 85 and 86 are objected to.

Claims 77-84, 87, and 88 are rejected.

After the filing of this Response, claims 35 and 37 are allowed; claims 85-86 are previously presented; and claims 83-84 and 87-88 are currently amended. Claims 1-34, 36, 38-41, 46-47, 54-55, 60-68, 73-74, and 77-82 are canceled. Claims 42-45, 48-53, 56-59, 69-72, and 75-76 are withdrawn. Support for the claims is found throughout the specification, including the original claims. The claims do not add new matter. In addition, amendments to the specification do not add new matter.

B. Status of Application.

In this response, Applicants address each of the Examiner's objections and rejections. Reconsideration and withdrawal of the objections and rejections are solicited for the reasons set forth below. Applicants therefore respectfully submit that the present application is in condition for allowance. Favorable consideration of all pending claims is respectfully requested.

This response is timely filed with a three-month extension of time. The USPTO is given authorization to charge Deposit Account No. 16-1445 for any fees necessary with the submission of this Response.

II. Amendments to the Specification.**A. Prior Objection Under 37 CFR 1.121 - Withdrawn.**FORM PTORSP
Rev. 5/1/03

PATENT/Docket No. PC 11050A
Serial No. 09/989,933
Page 9

Applicants acknowledge and appreciate the withdrawal of the objection under 37 CFR 1.121 to the amendment to the specification submitted on February 2, 2006, which did not show the changes made to the application relative to the immediately prior version of the specification.

B. Prior Objection under 35 U.S.C. 132(a) - Withdrawn.

Applicants acknowledge and appreciate the withdrawal of the objection under 35 U.S.C. 132(a) to the amendments filed March 1, 2005 and February 22, 2006, which introduced new matter into the disclosure.

C. The Objection Due to Informalities May Properly Be Withdrawn.

In the Office Action, part 6, the Examiner stated that the disclosure is objected to because "the application indicates on (e.g.) page 1 that U.S. application 08/107908 has indicated that the BVDV N^{pro} protein and coding sequence are not required for viral replication. However, this application does not appear to provide such teachings." The Examiner suggested that "the application be amended to indicate that the art (generally) have provided such teachings, and not the indicated U.S. application." Applicants respectfully traverse this objection.

Applicants have amended the specification to delete references to U.S. application 08/107908 (see amendments beginning on page 2 above). Thus, this objection has been rendered moot. Applicants respectfully request withdrawal of this objection.

III. Claim Objections and Rejections.

A. The Objection to Claims 30 and 31 - Withdrawn.

Applicants acknowledge and appreciate the withdrawal of the informalities objection to Claims 30 and 31.

B. The Objection to Claims 85 and 86 May be Properly Withdrawn.

In section 8 of the Office Action, the Examiner stated that "Claims 85 and 86 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim may not depend from another multiple dependent claim." Applicants respectfully traverse this objection.

Applicants have amended claims 83-84 which rendered moot the multiple dependency issues regarding claims 85 and 86 (see claim listing beginning on page 4 above). Applicants respectfully request withdrawal of this objection.

FORM PTORSP
Rev. 5/1/03

PATENT/Docket No. PC 11050A
Serial No. 09/989,933
Page 10

C. The Non-Statutory Subject Matter Rejection of Claims 39, 40, 63, 64, and 84 under 35 U.S.C. §101.

Applicants acknowledge and appreciate the withdrawal of the rejection of claims 39, 40, 63, and 64 under 35 U.S.C. §101 as being directed to non-statutory subject matter. The Examiner maintained this rejection for claim 84. Applicants have amended claim 84 to read on an isolated cell (see claim listing beginning on page 4 above). Thus, this rejection has been rendered moot. Applicants respectfully request withdrawal of this rejection.

D. The Indefiniteness Rejection of Claims 31, 60-68, 73, and 74 under 35 U.S.C. §112, Second Paragraph - Withdrawn.

Applicants acknowledge and appreciate the withdrawal of the rejection of claims 31, 60-68, 73, and 74 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regard as the invention.

E. The Written Description Rejection of Claims 30-34, 36, 38-41, 46, 47, 54, 55, 60-68, 73, and 74 under 35 U.S.C. §112, First Paragraph - Withdrawn.

Applicants acknowledge and appreciate the withdrawal of the rejection of claims 30-34, 36, 38-41, 46, 47, 54, 55, 60-68, 73, and 74 under 35 U.S.C. §112, First Paragraph, as failing to comply with the written description requirement (sections 12 and 13 of the Office Action).

F. The Obviousness Rejection of Claims 30, 33, 36, 38-41, 46, 47, 54, and 55 under 35 U.S.C. §103(a) May Properly Be Withdrawn.

Claims 30, 33, 36, 38-41, 46, 47, 54 and 55 were rejected under 35 U.S.C. 103(a) as being unpatentable over Behrens et al. (Journal of Virology. 1998; 72 (3): 2364-2372). This rejection was withdrawn due to the cancellation of the claims, but maintained for claims 77-84, 87, and 88. Applicants respectfully traverse this rejection.

Applicants have canceled claims 77-82, which renders this rejection moot in regard to these claims. Applicants have amended claims 83-84 and 87-88 so as to depend solely from currently allowed claims, which renders this rejection moot in regard to these claims.

Based on the arguments presented above, Applicants respectfully submit that the rejection of claims 77-84, 87, and 88 under 35 USC 103(a) may be properly withdrawn. Applicant respectfully requests withdrawal of this rejection.

FORM PTORSP
Rev. 5/1/03

PATENT/Docket No. PC 11050A

Serial No. 09/989,933

Page 11

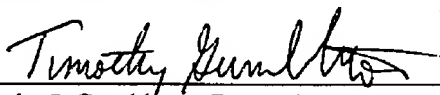
G. Allowable Subject Matter.

Claims 35 and 37 are allowed.

IV. Conclusion.

In view of the amendments and remarks made herein, Applicants respectfully submit that claims 35, 37, and 83-88 are in condition for allowance and request notification of same.

Respectfully submitted,



Timothy J. Gumbleton, Patent Agent
Registration No. 54,143

Date: June 28, 2007

Pharmacia & Upjohn Company
Global Intellectual Property
7000 Portage Road
Kalamazoo, Michigan 49001

Telephone No. (269) 833-2501
Telefax No. (269) 833-8897

FORM PTORSP
Rev. 5/1/03